

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

<b>HAYWOOD WILLIAMS, JR.,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Civil Action No. 01-1009 (RMC)</b>
	)	
<b>UNITED STATES DEPARTMENT OF JUSTICE, <i>et. al.</i></b>	)	
	)	
<b>Defendants.</b>	)	

**MEMORANDUM OPINION**

This matter is before the Court on Defendant's motion for summary judgment. Having considered Defendant's motion, Plaintiff's opposition, Defendant's reply, and the record in this case, the Court will grant Defendant's motion.

**I. Background**

Pursuant to the Freedom of Information Act (FOIA"), 5 U.S.C. § 552, Plaintiff submitted requests for information to the Drug Enforcement Administration ("DEA"), a component of the United States Department of Justice. Plaintiff mailed a FOIA request to the DEA on March 25, 2000. Compl., ¶ 5; Defendant's Motion to Dismiss, Declaration of Leila I. Wassom ("Wassom Decl."), ¶¶ 4, 6 and Ex. A, C.<sup>1</sup> His request sought the arrest files of "coconspirators/government witnesses," DEA field reports, investigative reports, agent notes, and the amounts of money paid to each

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<sup>1</sup> Leila I. Wassom is a Paralegal Specialist assigned to the Freedom of Information Section at DEA Headquarters in Washington, DC. She is familiar with the DEA's policies and practices regarding the processing of FOIA requests, FOIA exemptions, and the release of information. She reviewed and is familiar with the instant complaint. Wassom Decl., ¶¶ 1, 2.

coconspirator/government witness for his assistance.<sup>2</sup> Compl., Attach. (FOIA Request). The DEA acknowledged receipt of Plaintiff's request by letter dated April 4, 2000. Wassom Decl., ¶ 5. Because Plaintiff requested information regarding third parties, the DEA instructed Plaintiff to provide proof of death or a privacy waiver for each person. Wassom Decl., ¶¶ 5, 7 and Ex. B, D. On June 6, 2000, Plaintiff appealed the DEA's response to the Justice Department's Office of Information and Privacy ("OIP"). Wassom Decl., ¶ 8 and Ex. E. The OIP remanded the matter, and directed the DEA to release non-exempt records pertaining to three third parties for whom Plaintiff supplied proof of death: Melvin Davis, Michael V. Brown, and Joseph C. Mathis.<sup>3</sup> The DEA opened a request file for each third party, assigned a number to each file, and began its search for responsive records. Wassom Decl., ¶ 11.

The DEA informed Plaintiff that Melvin Davis had not been the subject of a DEA investigation, but he was mentioned in three DEA files. Wassom Decl., ¶ 13 and Ex. I. The DEA notified Plaintiff that it would charge a search fee estimated at \$112.00, and

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<sup>2</sup> Plaintiff's FOIA request read, in relevant part, as follows:

I hereby request access to (or copy of) or Amendment of the following documents:

1. The arrest files of coconspirators/government witnesses Walter Lee Holloway, Melvin Davis, Joseph Atkins, Willie J. Mitchell, Deborah London, Charles Wright, Mofeachar Blunt, Lloyd Blunt and Leon Nixon; . . .

If any expenses in excess of \$25.00 are incurred in connection with this request, please inform me of all such char[g]es prior to their being incurred for my approval.

Compl., Attach. (FOIA request dated March 25, 2000). Plaintiff subsequently amended his request "to include coconspirators Michael Victor Brown and Joseph C. Mathis, Jr. to the list of persons in my request of march 25, 2000." Compl., Attach (Letter from Plaintiff regarding Request No. 00-1099-F dated April 10, 2000).

<sup>3</sup> Plaintiff supplied copies of obituaries for Joseph C. Mathis, Jr. and Melvin Davis. He also cited a reported case acknowledging the death of Michael Victor Brown. See Compl., Attach. (Letter from Plaintiff regarding Request No. 00-1099-F dated May 2, 2000).

Plaintiff agreed to pay search fees. Wassom Decl., ¶ 14 and Ex. J (Letter from Plaintiff dated October 23, 2000). The DEA then conducted its search, and found 63 pages of records responsive to Plaintiff's FOIA request for information about Melvin Davis. Wassom Decl., ¶ 20. By letter dated June 8, 2001, the DEA notified Plaintiff that it would release records to him upon payment of \$84.00. Wassom Decl. ¶ 19, and Ex. K. The DEA has not released these records because it has not received Plaintiff's payment.<sup>4</sup> Wassom Decl., 21.

## II. Discussion

Defendants move to dismiss the complaint on the ground that Plaintiff failed to exhaust his administrative remedies. A requester may seek judicial review of his FOIA request only after having exhausted all administrative remedies. *See Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 61 (D.C. Cir. 1990). An agency may assess fees for the search for and duplication of documents requested under FOIA, and may require advance payment before processed records are released. 5 U.S.C. § 552(a)(4)(A); *see* 28 C.F.R. § 16.11 (2001). "Exhaustion [of administrative remedies] does not occur until the required fees are paid or an appeal is taken from the refusal to waive fees." *Oglesby v. Dep't of Army*, 920 F.2d at 66; *see also Trueblood v. Dep't of*

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<sup>4</sup> Plaintiff also submitted FOIA requests to the Executive Office for United States Attorneys and to the United States Marshal Service. *See* Compl., ¶ 5 and Attach. With respect to the FOIA request to the EOUSA, no responsive records were found concerning Joseph Mathis and Michael Brown; the agency was to conduct a further search for records concerning Melvin Davis. *See* Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction, Attach. 1 (Letter from Richard L. Huff, Co-Director, Office of Information and Privacy, U.S. Department of Justice, to Plaintiff regarding Appeal No. 00-4479). With respect to the FOIA request to the U.S. Marshal Service, the agency refused to confirm or deny the existence of the requested records. *See id.*, Attach. 2 (Letter from Richard L. Huff, Co-Director, Office of Information and Privacy, U.S. Department of Justice, to Plaintiff regarding Appeal No. 00-0069). Plaintiff does not challenge these responses, and the Court need not address them.

*the Treasury*, 943 F.Supp. 64, 68 (D.D.C. 1996). Commencement of a civil action pursuant to FOIA does not relieve a requester of his obligation to pay any required fees. See *Pollack v. Dep't of Justice*, 49 F.3d 115, 120 (4<sup>th</sup> Cir.), *cert. denied*, 516 U.S. 843 (1995). A FOIA suit is subject to dismissal for lack of subject matter jurisdiction if a plaintiff fails to exhaust all administrative remedies. See *Dettmann v. United States Dep't of Justice*, 802 F.2d 1472, 1477 (D.C.Cir.1986).

Plaintiff was aware that fees may be charged in connection with his FOIA request. The DEA notified Plaintiff that fees would be assessed, and informed him of the estimated search fee. When the DEA completed its search, it notified Plaintiff by letter dated June 8, 2001 of the balance due, provided instructions for making payment, and indicated its intention to forward the records to Plaintiff upon receipt of payment. Although Plaintiff did not receive the DEA's June 8, 2001 letter, Plaintiff now certainly is aware of his obligation to pay the search fee. Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction, ¶ 5.

### III. Conclusion

Because Plaintiff has not paid required fees in connection with his FOIA request, Plaintiff has not exhausted his administrative remedies. For this reason, the Court will dismiss this action. An order consistent with this Memorandum Opinion is issued this same date.

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ROSEMARY M. COLLYER  
United States District Judge

DATE:

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAYWOOD WILLIAMS, JR.,

Plaintiff,

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UNITED STATES DEPARTMENT  
OF JUSTICE, *et. al.*

Defendants.

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Civil Action No. 01-1009 (RMC)

**ORDER**

For the reasons stated in the accompanying Memorandum Opinion, on this  
\_\_\_\_\_ day of January 2003, it is hereby

ORDERED that Defendants' Motion to Dismiss [Dkt. #19] is GRANTED, and it is

FURTHER ORDERED that this action is DISMISSED WITHOUT PREJUDICE.

This is a final appealable Order. See Fed. R. App. P. 4(a).

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ROSEMARY M. COLLYER  
United States District Judge